

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

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Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

LEGEND

UIL 4945.04-04

M= Organization
N= Employer
P= School District
x= dollars

Dear :

We have considered your request for advance approval of your employer-related grant-making program under section 4945(g)(1) of the Internal Revenue Code, dated March 6, 2009.

Our records indicate that M was recognized as exempt from Federal income tax under section 501(c)(3) of the Code and that it is classified as a private foundation as defined in section 509(a).

Your letter indicates that M will operate a grant-making program to award scholarships for dependents of N employees.

For academic year 2009-10, up to five (5) new educational scholarship grants will be made available in the amount of x each for the benefit of dependents of full-time and regular part-time employees of N, excluding employees eligible to receive bonuses under N's compensation system for salaried employees. The Organization (M) may periodically adjust the identified dollar amounts of the grants to reflect changes in the cost of higher education.

To be eligible to apply, an applicant must be a senior in high school expected to graduate during the academic year in which the award application is submitted. Grant awards will be made by a selection committee of local educators selected by the superintendent of P without input from M or N. The committee and each member thereof will be totally independent of M and N, and no present or former employee, officer, or director may serve as a member of the committee. The members of the committee will have the background and knowledge in the field of education to properly evaluate the potential of the applicants.

A nondiscriminatory and objective procedure will be used in determining award recipients. Minimum requirements will be that an award recipient (i) be in the top 25% of his or her high school graduating class, (ii) has a minimum cumulative high school grade point average (GPA) of 3.3 on a 4.0 scale, (iii) has a minimum ACT score of 23, and (iv) has taken the PSAT. The committee will make award decisions for qualified applicants on the basis of an objective consideration of the above information, together with the applicant's documented involvement in extracurricular and community activities which, taken together, are indicative of leadership potential. No

preference will be given on the basis of involvement in any activity related to M or N. Grants will be awarded solely in the order recommended by the committee. The number of grants to be awarded in any year may be reduced but may not be increased from the number recommended by the committee. Neither eligibility nor any selection decision by the committee will be based on any employment-related factors, such as the related employee's position, services or duties at N.

To accept an initial grant award a student must have been accepted for admission to an accredited college or university described in section 170(b)(1)(A)(ii) of the Code and must file a statement with M that he or she intends to enroll in and attend an accredited college or university. Each grant will be for one academic year, but a grant may be renewed for up to three additional years if the recipient maintains a college grade point average of 3.3 on a 4.0 scale and remains in good standing at the accredited university. Any public announcement of the awards will be made by the committee or by M.

The scholarship program will not be used to recruit employees for N or to induce employees to continue their employment or otherwise follow a course of action sought by N or M. No minimum period of employment with N will be required for eligibility of a dependent to apply for a grant. A grant will not be terminated if the related employee leaves the employment of N, regardless of the reason for termination of employment. Likewise, a grant recipient will not become ineligible for renewal of a grant for a subsequent academic year on account of the related employee's termination of employment. Grants will not be conditioned on the recipient or related employee being or continuing to be available for future employment with M or N.

The courses of study for which grants are awarded are general university studies determined by the grant recipient and are not limited to those that would be of particular benefit to N or M. There will be no requirement, condition or suggestion, express or implied, that the grant recipient or related employee is expected to render future employment services for M or N, or be available for such future employment.

In all events, the terms of each grant and the courses of study for which grants are available will meet all other requirements of Section 117 of the Internal Revenue Code and the regulations there-under, and will be consistent with a disinterested purpose of enabling the recipients to obtain an education in their individual capacities solely for their personal benefit and will not include any commitments, understandings or obligations, conditional or unconditional, suggesting that the studies are undertaken by the recipient for the benefit of N or M, or have as their objective the accomplishment of any purpose of N or M other than enabling the recipients to obtain an education in their individual capacities and solely for their personal benefit.

M will (1) arrange to receive and review grantee reports annually, and upon completion of the purpose for which the grant was awarded, (2) investigate diversions of funds from their intended purposes, and (3) take all reasonable and appropriate steps to recover diverted funds, ensure other grant funds held by a grantee are used for their intended purposes, and withhold further payments to grantees until M obtains grantees' assurances that future diversions will not occur and that grantees will take extraordinary precautions to prevent future diversions from occurring.

M will maintain all records relating to individual grants, including information obtained to evaluate grantees, identify whether a grantee is a disqualified person, establish the amount and purpose of each grant, and establish that M undertook the supervision and investigation of grants described above.

Sections 4945(a) and (b) of the Code impose certain excise taxes on "taxable expenditures" made by a private foundation.

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g).

Section 4945(g) of the Code provides that section 4945(d)(3) shall not apply to individual grants awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance if it is demonstrated that:

- (1) The grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii);
- (2) The grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public; or
- (3) The purpose of the grant is to achieve a specific objective, produce a report or similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Section 53.4945-4(c)(1) of the Regulations provides that to secure approval, a private foundation must demonstrate that:

- (i) Its grant procedure includes an objective and nondiscriminatory selection process;
- (ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and
- (iii) The foundation plans to obtain reports to determine whether the grantees performed activities that the grants are intended to finance.

Revenue Procedure 76-47, 1976-2 C.B. 670, sets forth guidelines to be used in determining whether a grant made by a private foundation under an employer-related program to a child of an employee of the particular employer to which the program relates is a scholarship grant that meets the provisions of section 117(a) of the Code (as that section read before the Tax Reform Act of 1986). If a private foundation's program satisfies the seven conditions set forth in Sections 4.01 through 4.07 of Rev. Proc. 76-47 and meets the percentage test described in Section 4.08, the Service will assume the grants meet the provisions of section 117(a), as that section read before the Tax Reform Act of 1986.

You have agreed that procedures in awarding grants under your program will be in compliance with Sections 4.01 through 4.07 of Rev. Proc. 76-47 (without regard to the amendments to section 117(a) made by the Tax Reform Act of 1986). In particular, the selection of individual grant recipients will be made by a selection committee the members of which are totally independent and separate from the private foundation, the foundation's creator, and the relevant employer. The grants will not be used as a means of inducement to recruit employees nor will a grant be terminated if the employee leaves the employer. The recipient will not be restricted in a course of study that would be of particular benefit to the relevant employer or to the foundation.

Section 4.08 of Rev. Proc 76-47 provides a percentage test guideline. It states in the case of a program that awards grants to children of employees of a particular employee, the program meets the percentage test if either of the following tests are met: the number of grants awarded under that program in any year to such children do not exceed 25 percent of the number of employees' children who were eligible, were applicants for such grants, and were considered by the selection committee in selecting the recipients of grants in that year, or the number of grants awarded under the program in any year to such children does not exceed 10 percent of the number of employees' children who can be shown to be eligible for grants (whether or not they submitted an application) in that year.

You have agreed that your program will meet the requirements of either the 25 percent or 10 percent percentage test of Section 4.08 applicable to a program that awards grants to children of employees of a particular employer. Records should be maintained to show that you meet the applicable percentage test of Section 4.08.

This determination is issued with the understanding that in applying the 10 percent test applicable to employees' children set forth in Rev. Proc. 76-47, you will include as eligible only those children who meet the eligibility standards described in Rev. Proc. 85-51, 1985-2 C.B. 717.

This determination will remain in effect as long as the procedures in awarding grants under your program remain in compliance with Sections 4.01 through 4.08 of Rev. Proc. 76-47 (without regard to the amendments to section 117(a) made by the Tax Reform Act of 1986). If you enter into any other program covering the same individuals, the percentage test of Rev. Proc. 76-47 must be met in the aggregate.

Based on the information submitted and assuming your award programs will be conducted as proposed, your procedures for granting the awards comply with the requirements contained in section 4945(g)(1) of the Code and that awards granted in accordance with such procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3).

In addition, we have determined that awards made under your procedures are excludable from the gross income of the recipients subject to the limitations provided by section 117 of the Code.

This determination is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to foundation managers, or members of the selection committee, or for a purpose that is inconsistent with the purpose described in section 170(c)(2)(B) of the Code.

The approval of your employer-related grant-making program is a one-time approval. This determination only covers the grant programs described above. Thus, approval shall apply to subsequent grant programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

Any funds you distribute to individuals must be made on a true charitable basis in furtherance of the purposes for which you are organized. Therefore, you should maintain adequate records and histories so that any or all grant distributions can be substantiated upon request by the Internal Revenue Service.

This determination is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as a precedent.

You must report any future changes in your grant making procedures. Please keep a copy of this letter in your permanent records.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements